

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>Prairie Valley Farm Service, LLC</b> <b>Woodbury County, Iowa</b>	NO. 2014-AQ- <b>12</b> NO. 2014-SW- <b>04</b>

TO: Prairie Valley Farm Service, LLC  
Mark Pottorf, Registered Agent  
2450 Dallas Avenue  
Luton, Iowa 51052

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Prairie Valley Farm Service, LLC, for the purpose of resolving violations pertaining to illegal open dumping and illegal open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Michelle Sabatini  
Iowa Department of Natural Resources  
Field Office No. 3  
1900 North Grand  
Gateway North, Suite E17  
Spencer, IA 51301-2200  
Phone: 712-262-4177

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515-725-9551

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue

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any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Mr. Mark Pottorff is the owner of a private company called Prairie Valley Farm Service, LLC, which is a general agricultural business. The main facility is located at 2540 Dallas Avenue, Luton, Iowa. In addition, Mr. Pottorff also owns an acreage located at 10 3<sup>rd</sup> Street, Luton, Grange Township, Woodbury County, Iowa (the site).

2. On September 5, 2013, an illegal fire, located at the site described above, was reported to the emergency dispatcher in Woodbury County, Iowa. The Salix Fire Department first responders went to the site and located a large burning plastic tank. Three tanks were located in the northwest corner of the property near the road. Two of the three plastic tanks burned on September 5th. The emergency management personnel at the site observed that one other tank already had been burned when they arrived. The plastic tanks melted as a result of being burned, and dark black smoke was produced by the fire. The smoke was going straight up and a light west wind was carrying the smoke over the town of Luton. One Luton citizen was taken to the hospital for smoke exposure. Pictures of the fire were taken at the site.

3. On September 5, 2013, after the fire was extinguished by the Salix Fire Department, Gary Brown, who is the Woodbury County Emergency Management Coordinator, reported the open burning to DNR Field Office No. 3. Mr. Brown also provided to DNR the pictures that were taken at the site.

4. On September 18, 2013, Salix Fire Chief Justin Iverson provided to DNR the dispatch report regarding the September 5th fire. Mark Pottorff was not at the site at that time, and attempts to contact him were unsuccessful.

5. On October 4, 2013, DNR Field Officer Michelle Sabatini contacted Mark Pottorff by phone. Mr. Pottorff informed Ms. Sabatini that on September 5th he had set a fire in his burn box, which contained lumber and tree limbs. Mr. Pottorff stated that after the fire had ceased in the box, he had left the site. Mr. Pottorff claimed that after he left the site, the fire in the burn box must have reignited and spread to the three plastic tanks nearby. Mr. Pottorff claimed it was his intention to repurpose the tanks.

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6. The pictures provided by Mr. Brown conflict with Mr. Pottorff's account of the events. First, the pictures show that the burn box contained miscellaneous metal and other objects, in addition to the lumber and yard waste mentioned by Mr. Pottorff. The burning of these additional objects would constitute the burning of illegal solid waste. Second, DNR has determined that the fire in the burn box could not have spread to the plastic tanks, based on site and weather conditions on September 5th. The burning of the tanks was an independent act.

7. An October 9, 2013, Notice of Violation and Notice of Referral letter was sent to Mark Pottorff for illegal open burning of solid waste at the site.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The illegal open burning of solid waste in this case demonstrates violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and Prairie Valley Farm Service, LLC, agrees to the following:

1. Prairie Valley Farm Service, LLC, shall pay a penalty of \$4,000.00 within 30 days of the date this order is signed by the Director.

2. Prairie Valley Farm Service, LLC, shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any location

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in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning.

3. By no later than December 16, 2013, Prairie Valley Farm Service, LLC, shall remove the burn box and all remaining solid waste located at the site to a licensed landfill and submit all landfill receipts to DNR Field Office No. 3.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Prairie Valley Farm Service, LLC, received economic benefit from the illegal open burning that occurred in this case. However, the amount of economic benefit of disposal by open burning is difficult to ascertain in this case. Much of the material evidence of the solid waste disposed in the burn box was destroyed in the fire. If Mr. Pottorff had properly disposed of the tanks and the materials illegally burned in the burn box, then the economic benefit would include costs saved by avoiding landfill disposal fees and associated transportation costs. Therefore, DNR estimates that at least \$500.00 in economic benefit accrued. The amount of \$500.00 is assessed for economic benefit.

Gravity of the Violation – Open burning damages air quality in Iowa and can cause significant acute and chronic health effects. Particulate matter from the open burning of these plastic tanks released toxic substances into the air. This fire and related open burning threatens the integrity of DNR's environmental programs and efforts to protect the state's natural valuable resources. Moreover, one Luton citizen was taken to the hospital and treated for smoke inhalation as a result of the burning. Therefore, \$3,000.00 is assessed for the gravity of the violations.

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Culpability – Prairie Valley Farm Service, LLC, has intentionally and knowingly conducted the open burning of prohibited wastes. Prairie Valley Farm Service, LLC, is responsible to be knowledgeable of the DNR's requirements, and to be alert to the probability that its conduct is subject to DNR's rules. Open burning prohibitions have been in place in Iowa for over 25 years. For the above reasons \$500.00 is assessed for culpability.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Prairie Valley Farm Service, LLC. For that reason, Prairie Valley Farm Service, LLC, waives its right to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Chuck Gipp  
Chuck Gipp  
Iowa Department of Natural Resources

Dated this 25<sup>th</sup> day of  
March, 2014.

Prairie Valley Farm Service LLC  
Prairie Valley Farm Service, LLC  
Mark Poter  
DNR Field Office 3; Anne Preziosi; VII.C.2

Dated this 3/12/14 day of  
March, 2014.